IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5866 OF 1996

M/s.National Co-operative Housing Society — Petitioner

versus

The State of Maharashtra and others — Respondents

Mr.S.B.Deshmukh, adv. for petitioner.

Smt.S.S.Bhende, AGP for respondents 1 to 3.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 27th October 2004

PC :

1. Heard advocates.

2. The challenge is to letters dated 24th September 1996 and 25th October 1996 issued by respondent no.3 Deputy Registrar, Co-operative Societies, Pune City, Pune. These letters seem to have been issued on the basis of Circulars issued by the State Government dated 26th July 1994, 27th November 1989 and 20th December 1989. By the impugned letters, the Deputy Registrar has called upon the petitioner society to amend it’s bye-laws. The case of petitioner is that the power to issue such direction is vested in the

State Government and Deputy Registrar has no jurisdiction to issue any such direction under Section 79. According to petitioner the power to issue direction under section 79 is vested with the State Government and not with the Deputy Registrar.

3. Secondly, it is urged on behalf of petitioner that the directions issued by Deputy Registrar, Co-operative Societies are not in public interest, and, therefore, society is not bound to follow the said directions. Reliance is placed on a decision of the Division Bench of this Court in the case of Karvenagar Sahakari Griha Rachana Sanstha Maryadit, Pune and another Vs. State of Maharashtra and others reported in AIR-1989-Bom-392. Para no.10 of the said decision reads as follows :-

> "10. The next contention of Dr.Naik that the Registrar is exercising quasi-judicial powers while sanctioning the amendment of by-laws u/s.13 or compelling a society to amend the by-laws under Section 14 of the Act is correct. The Registrar is required under the provisions of the Act to exercise powers and while exercising the powers the Registrar is performing quasi-judicial functions. The power exercised by the Registrar is appealable under Section 152 of the Act and further revisable by the State Government. It is now well settled that exercise of such powers are quasi-judicial and the Registrar in exercise thereof should not

be guided by extraneous consideration or by the directions issued by higher authorities including the State Government. A reference can be usefully made to the decision of the Supreme Court reported in AIR-1984-SC-322 (Chandrika Jha Vs. State of Bihar). Dr.Naik submitted that the petitioner society is compelled to amend the by-laws by the letter issued by the Registrar and the Registrar has exercised his power merely because the Government has issued directions and not because the requirements of Section 14 are complied with. Section 14 provides that the Registrar may call upon the society to make the amendment provided it appears to the Registrar that an amendment of the by-laws is necessary or desirable in the interest of such society. The crucial words are "necessary or desirable in the interest of such society". The Registrar has to be satisfied that the amendments of the by-laws are necessary or desirable in the interest of society to which order is directed. The Registrar in the present case has not even examined whether the requirements of S.14 are satisfied, but has directed the society to amend the by-laws merely because the Government so desires. It hardly requires to be stated that permission to an allottee of a flat in the housing society to erect multi-storeyed structure would not be in the interest of the housing society. The housing society, like the petitioner society, is formed with a view to provide for peaceful accommodation to the memebrs and therefore the by-laws insist that the allottee of a plot of land can erect structure for his own occupation and not for letting out or for commercial exploitation of land. An amendment to the by-laws permitting such action can by no stretch of imagination be in the interest of society. The members of the society contributes the amount for maintenance of common amenities and service and the liability to contribute is on the basis that plots of land would be enjoyed by the members by construction of houses for their own benefit. The internal roads are constructed, the lights are provided,

> water supply is given and all other common amenities and services are provided by the society. The permission to a member to construct high rising building and letting out the flats on ownership basis would result into heavy pressure on the common amenities and services provided by the society and for which the members surely have not contemplated while joining the co-operative society. The permission to construct high rising building on a developed plot in housing society would certainly give huge benefit to a member but at the costs of other members and in clear violation of by-laws. The amendment is also not necessary as the members have joined the society voluntarily accepting the rules and by-laws and in case of member is not desirous of constructing house for his own use, then there is no compulsion to continue the membership. It is therefore obvious that the Registrar is forcing the petitioner society to amend the by-laws when it is neither necessary nor desirable in the interest of the petitioner society. .... "

4. Provisions of Section 79 are clear and unambiguous. The power to issue directions to the co-operative societies is vested in the State Government and if the Deputy Registrar is called upon to make report, he should make it as per provisions of sub section 1 of Section 79. Tthe petitioner is, therefore, right in contending that the impugned letters dated 24th September 1996 and 25th October 1996 are without jurisdiction inasmuch as the Deputy Registrar has no jurisdiction to issue such directions. In view of our finding that Deputy Registrar had no power to

issue the impugned letters, it is not necessary for us to consider the question as to whether the proposed amendments are in the public interest. The issue is expressly kept open. Writ petition is made absolute in terms of prayer clause (a). No order as to costs.

(A.P.SHAH, J.)

(S.C.DHARMADHIKARI, J.)